

**MEMORANDUM**

**TO:** Kaye Norton, Ohio Department of Health

**FROM:** Sydney King, Regulatory Policy Advocate

**DATE:** February 28, 2014

**RE:** **CSI Review – Lead Hazard Abatement Training Program (OAC 3701-82-01, 3701-82-01.1, 3701-82-01.2, 3701-82-01.3, 3701-82-01.4, 3701-82-02, and 3701-82-03)**

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On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

**Analysis**

This rule package consists of seven rules being proposed by the Ohio Department of Health (ODH) related to the lead hazard abatement training program. There are six amended rules and one no-change rule reviewed as part of the five-year review process required by ORC 119.032. The rule package was filed with the CSI Office on December 27, 2013, and the original comment period for the rules closed on January 26, 2014. However, ODH made clarifications and grammatical amendments subsequent to the filing and extended the public comment period to February 6, 2014. ODH provided a revised BIA on January 28, 2014.

Lead abatement is the process of safely removing and reducing lead hazards from buildings. The rule package provides the application procedures for a lead abatement training program, qualifications for lead program training managers and instructors, duties for approved training programs, course requirements for training programs, requirements for licensure examination, application procedures for environmental lead analytical laboratory and clinical laboratory approval, and revocation procedures for a training program. According to the BIA, the ODH Lead

Poisoning Prevention Program ensures that the public receives safe and proper lead abatement services by requiring the services be conducted by trained and licensed professionals who adhere to federal and state regulations.

According to the BIA, stakeholders were involved in the early review and drafting of the rules. The stakeholders included the Building Environment Council of ODH, East Akron Neighborhood Development Corporation, Hina Environmental Solutions, and Cleveland Public Health Department. ODH staff presented the rules and solicited feedback in the summer and fall of 2013. ODH amended the draft rules in response to comments received. No comments were received during the public comment period.

The BIA states lead training course providers and lead analytical labs will incur the costs associated with compliance and licensing fees. The initial lead course application fee is \$750. The application lasts three years. The refresher lead course application fee is \$250. The application for approval of environmental lead analytical labs and clinical labs is \$300. ODH estimates the time necessary to complete the applications and maintain appropriate record keeping practices varies based on the size of the company.

During the review, the CSI Office identified additional adverse impacts in the rules. ODH addressed these impacts in follow-up discussions. Laboratories are required to obtain accreditation with the National Lead Laboratory Accreditation Program and Clinical Laboratory Improvement Amendments. According to ODH, this is required by federal law and the average cost for National Lead Laboratory Accreditation Program is \$1,400 - \$2,800 per year and Clinical Laboratory Improvement Amendments is \$150 - \$440. Additionally, laboratories certified through the Clinical Laboratory Improvement Amendments are required to take part in proficiency testing rounds using an approved proficiency testing laboratory. The cost to comply with this requirement can range from \$200 to \$400 per year. Lead program instructors are required to attend lead-specific training courses. For an instructor with no previous lead experience, a course could cost \$475 but courses have been offered for \$150. ODH states this is necessary to ensure the instructors can properly teach about the subject matter.

The CSI office inquired to ODH about possible duplication with the Ohio Environmental Protection Agency (Ohio EPA) rules. Although the United States Environmental Protection Agency issues grants to state lead hazard reduction programs and provides the standards for proper lead abatement training, Ohio Revised Code 3742.03 authorizes the ODH to adopt rules for the administration and enforcement of lead abatement. The Ohio EPA regulates the amount of lead in drinking water and lead hazard contamination. ODH has provided assurances that the rules do not duplicate Ohio EPA efforts.

ODH states the rules are necessary to implement Ohio Revised Code 3742.08 and ensure the public receives safe and proper lead abatement services.

After reviewing the proposed rules and the revised BIA, the CSI Office has determined that the rules satisfactorily meet the standards espoused by the CSI Office, and the purpose of the rules is justified.

**Recommendation**

For the reasons explained above this office does not have any recommendations regarding this rule package.

**Conclusion**

Based on the above comments, the CSI Office concludes that the Department should proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review.

cc: Mark Hamlin, Lt. Governor's Office